



## **General Services Administration**

**[Notice-Qp-2018-02; Docket No. 2018-0002; Sequence No. 11]**

### **Request for Information from Suppliers Selling on Commercial E-Commerce Portals**

**AGENCY:** Office of Enterprise Strategy Management, General Services Administration (GSA).

**ACTION:** Request for information.

**SUMMARY:** The General Services Administration (GSA) is soliciting information from the *suppliers* selling product through commercial e-Commerce Portals in order to complete Phase II of the requirements enacted in Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals.

Note: A separate RFI is posted for those companies who are providers of commercial e-commerce platforms. Throughout the design of this program, GSA and the Office of Management and Budget (OMB) have emphasized open and ongoing engagement. The questions in the RFI are intended to continue the dialogue and to allow GSA and OMB both to draft the Phase II report (due to Congress in March 2019) and to move towards phased implementation later in 2019.

**DATES:** Interested parties may submit written comments to [www.regulations.gov](http://www.regulations.gov) by July 20, 2018. GSA is also hosting its second modified town-hall style public meeting. This

meeting is in furtherance of Phase II on June 21, 2018, at 8:30 a.m., Eastern Standard Time(EST). Further Information for the public meeting may be found on the Commercial Platform Interact group page on <https://interact.gsa.gov/group/commercial-platform-initiative> and in the *Federal Register* (83 FR 25004), published on May 31, 2018.

**ADDRESSES:** Submit comments identified by "Request for information from Suppliers Selling on Commercial e-Commerce Portals", by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments by searching for "Request for information from Suppliers Selling on Commercial e-Commerce Portals". Select the link "Comment Now" and follow the instructions provided at the "You are commenting on" screen. Please include your name, company name (if any), and "Request for information from Suppliers Selling on Commercial e-Commerce Portals", on your attached document.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, 2nd Floor, ATTN: Ms. Mandell, Washington, DC 20405-0001.

*Instructions:* Please submit comments only and cite "Request for information from Suppliers Selling on Commercial e-Commerce Portals" in all correspondence

related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Jasmine Schaaphok at *jasmine.schaaphok@gsa.gov*, or 571-330-3941, for clarification of content, public meeting information, and submission of comment. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite "Request for information from Suppliers Selling on Commercial e-Commerce Portals."

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The General Services Administration's (GSA) mission is to deliver value and savings in real estate, acquisition, technology, and other mission-support services across Government. For decades, GSA has provided access to commercial products through a number of channels including GSA Advantage!, GSA eBuy, GSA Global Supply, and the Federal Supply Schedules.

GSA has long been focused on improving the acquisition of commercial items. Throughout its history, GSA has sought to leverage the best available technology to help agencies shorten the time to delivery, reduce administrative cost,

make compliance easier, be a strategic thought leader and supplier of choice across the Federal Government, and be a good partner to industry. Today, the best available technology includes commercial e-commerce portals.

The National Defense Authorization Act (NDAA) for Fiscal Year 2018, Section 846 "Procurement Through Commercial e-Commerce Portals", directs the Administrator of the GSA to establish a program to procure commercial products through commercial e-commerce portals. Section 846 language can be found at the following link -

<https://interact.gsa.gov/group/commercial-platform-initiative>. Section 846 paragraph (c) instructs the "Director of the Office of Management and Budget, in consultation with the GSA Administrator and the heads of other relevant departments and agencies," to carry out three implementation Phases: 1. Implementation Plan; 2. Market Analysis and Consultation; and 3. Program Implementation Guidance. OMB and GSA completed Phase I, an initial implementation plan, in March of 2018. The plan, found at <https://interact.gsa.gov/document/gsa-and-omb-phase-i-deliverable-attached>, discusses government and industry stakeholder goals and concerns, the different types of portal provider models currently prevalent in the commercial market, and areas where legislative change or

clarification are required to enable flexibility in the full and effective use of commercial e-commerce portals in accordance with the goals of section 846. The plan also outlines deliverables anticipated to be completed in FYs 18, 19, and 20.

GSA is currently working on Phase II with the intent of delivering a proof of concept near the end of FY19.

Phase II of the legislation requires (excerpt below):

(2) PHASE II: MARKET ANALYSIS AND CONSULTATION.—Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), recommendations for any changes to, or exemptions from, laws necessary for effective implementation of this section, and information on the results of the following actions:

(A) Market analysis and initial communications with potential commercial e-commerce portal providers on technical considerations of how the portals function (including the use of standard terms and conditions of the portals by the Government), the degree of customization that can occur without creating a Government-unique portal, the measures necessary to address the considerations for supplier and product screening

specified in subsection (e), security of data, considerations pertaining to nontraditional Government contractors, and potential fees, if any, to be charged by the Administrator, the portal provider, or the suppliers for participation in the program established pursuant to subsection (a).

(B) Consultation with affected departments and agencies about their unique procurement needs, such as supply chain risks for health care products, information technology, software, or any other category determined necessary by the Administrator.

(C) An assessment of the products or product categories that are suitable for purchase on the commercial e-commerce portals.

(D) An assessment of the precautions necessary to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats.

(E) A review of standard terms and conditions of commercial e-commerce portals in the context of Government requirements.

(F) An assessment of the impact on existing programs, including schedules, set-asides for small business concerns, and other preference programs.

## **II. Written Comments**

To assist GSA in meeting the requirements associated with Phase II of the implementation, GSA and OMB are inviting suppliers selling product through commercial e-commerce platforms to submit written comments. Comments should be submitted by July 20, 2018, which will enable the Government to take them into account as we are drafting our Phase II deliverable. (A separate RFI has been issued focused on e-commerce platform operators.)

GSA and OMB have developed a number of questions grouped around three focus areas: product categories, terms and conditions, and program design. These three areas are central to the analysis required in paragraphs (A), (C), and (E) above. This information will also be used to help inform GSA about the general scope, shape, and types of products that should be considered for a proof of concept. In accordance with the Phase I implementation plan, the proof of concept is planned for launch in FY 2019.

Each question is intended to provide respondents with a general framework for commenting. These questions are not

intended to be all-inclusive; other comments and observations are encouraged.

## **1. Product Categories**

- a. Identify which product types/categories/subcategories should be considered in scope for inclusion in the program. Describe the classification system used, if not product service codes or North American Industry Classification System (NAICS) codes. For each category/subcategory identified, include as many of the following as possible:
  - i. Rationale for inclusion;
  - ii. Assessment of supply chain risk, including the extent to which you believe counterfeit products are a significant problem, and mitigation strategies;
  - iii. List existing e-commerce commercial portals on which you currently sell these products;
  - iv. Level of visibility into country of origin, including compliance with the Buy American Act (BAA), other domestic sourcing restrictions, and existing trade agreements; including how these are verified; and



- v. If multiple categories/subcategories are identified, provide a suggested ranking.
- b. Identify which categories/subcategories should be excluded from the scope of this effort and the rationale.

## **2. Terms and Conditions (Ts&Cs)**

- a. General
  - i. To the extent you sell products as a third party through a commercial e-commerce portal, what Ts&Cs do you have with them?
  - ii. What terms are unacceptable? What terms are absolute must-haves?
  - iii. Are there unique terms and conditions when looking at serving the Contiguous United States (CONUS) vs Outside the Contiguous United States (OCONUS)? What are some that we might need to consider?
  - iv. What should GSA be thinking about with respect to BAA and existing trade agreements (and implementing regulations)? How do you currently track/monitor country of origin for products, if at all?
  - v. How is security of data addressed in your standard Ts&Cs?

vi. If you currently sell through a portal,  
how are fees / fee structures addressed in  
the terms and conditions?

b. Suitability of FAR Commercially Available Off-the-Shelf (COTS) Item Requirements: Please address the extent you believe the following clauses/provisions are consistent with and/or relevant to current, standard commercial practice when selling through a commercial e-commerce portal. If they are not consistent and/or relevant, please indicate what obstacles they would present if applied to the section 846 program. Conversely, if there are public policy reasons why any of these should be retained, please explain.

1. 52.212-1(a), NAICS/ business size
2. 52.212-1(b), Submission of offers
3. 52.212-1(c), Period for acceptance of offers
4. 52.212-1(d), Product samples
5. 52.212-1(e), Multiple offers
6. 52.212-1(f), Late submissions, modifications, revisions, etc
7. 52.212-1(g), Contract award

8. 52.212-1(h), Multiple awards
9. 52.212-1(i), Availability of  
requirements documents
10. 52.212-1(j), Unique entity identifier
11. 52.212-3(p), Ownership or Control of  
Offeror
12. 52.212-3(r), Predecessor of Offeror
13. 52.212-4(f), Excusable delays
14. 52.212-4(l), Termination for  
Government's convenience
15. 52.212-4(o), Warranty
16. 52.212-4(q), Other compliance
17. 52.204-10, Reporting Executive  
Compensation and First-Tier Subcontract  
Awards
18. 52.219-3, Notice of HUBZone Set-Aside  
or Sole-Source Award
19. 52.219-4, Notice of Price Evaluation  
Preference for HUBZone Small Business  
Concerns
20. 52.219-8, Utilization of Small Business  
Concerns
21. 52.219-27, Notice of Service-Disabled  
Veteran-Owned Small Business Set-Aside

- 22. 52.222-3, Convict Labor
- 23. 52.232-40, Providing Accelerated  
Payments to Small Business  
Subcontractors
- 24. 52.212-1 (1), Debriefing
- 25. 52.212-3(i), Certification Regarding  
Knowledge of Child Labor for Listed End  
Products
- 26. 52.212-3(t), Public Disclosure of  
Greenhouse Gas Emissions and Reduction  
Goals
- 27. 52.212-4(a), Inspection and acceptance
- 28. 52.212-4(b), Assignment of claims
- 29. 52.212-4(c), Changes
- 30. 52.212-4(d), Disputes
- 31. 52.212-4(g), Invoice
- 32. 52.212-4(i) (1), Items accepted
- 33. 52.212-4(i) (3), Electronic Funds  
Transfer
- 34. 52.212-4(i) (4), Discount
- 35. 52.212-4(j), Risk of loss
- 36. 52.212-4(k), Taxes
- 37. 52.212-4(s), Order of precedence

**3. Program design:**

- a. Competition is a core goal of the program.
- Towards that end, the user needs to be able to see/compare products across multiple portals and / or suppliers. What is the best way to get to a single sign-on across portals?
- b. If you are not registered in the System for Award Management, would you be willing to register. Why or why not?
- c. The section 846 language stated both that all existing procurement laws applied and that GSA should strive to be consistent with commercial practice. To reconcile these objectives, in Phase I, GSA only proposed legislative changes necessary to reach program implementation, primarily around the nature of competition. For purposes of Phase II, what additional legislative changes GSA should consider proposing?
- d. In GSA's view, the nature of buying through an e-commerce portal brings a significant new level of competition into the micro-purchase world. GSA proposed raising the micro-purchase threshold to \$25,000. What benefits and disadvantages do you see in a higher threshold? Would you recommend a higher threshold and, if so, what should it be?

- e. In the first phase of implementation, should this program be limited to orders within the contiguous United States? If so, why? If not, why not and what issues should be considered?
- f. How do the pricing algorithms respond to sudden increases in demand?
- g. As a supplier, do you have the capability to participate in either a public or private (or curated) 'punchout' type of experience? Please explain.
- h. Implementation and operationalization of this program will entail the involvement of GSA, ordering agencies, portal providers, and third-party suppliers. GSA envisions its role primarily focusing on the following:
  - i. negotiating the contracts with the portal providers;
  - ii. working with stakeholders to shape the scope of product offerings, based on suitability, potential challenges in managing supply chain risk, and other considerations;

- iii. working with agencies on effective use of protocols and safeguards to refine access to product offerings;
- iv. collecting, vetting and sharing data; and,
- v. developing guidance in consultation with OMB and training federal agencies in proper competitive procedures through the porta; and,
- vi. potentially validating the suppliers as responsible business partners.

Do you agree with this description of roles and responsibilities for GSA in optimizing the user experience and the overall success of the program? Are there key items missing?

- i. What opportunities do you see for your existing Government business (and potential future new business)? How can we best design a program to promote small business utilization and new entrants into the federal marketplace?

j. Proof of concept: As explained in the Phase I implementation plan, GSA intends to proceed with a proof of concept in FY 2019. What is your recommended vision for a proof of concept that would be both manageable and meaningful, including types of products offered?

Dated: June 12, 2018.

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